MONTANA LEGISLATIVE HISTORY

Chapter 493 1987

Bill H 284 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-30	___C	Hearing Date(s)	3-16	___C
	2-5	___C		3-19	___C
	2-11	___C		3-21	___C
	_____	___C		_____	___C
Date Out	2-19	___C	DATE OUT	3-21	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

4/10 SIGNED BY PRESIDENT

4/11 TRANSMITTED TO GOVERNOR
4/16 SIGNED BY GOVERNOR
CHAPTER NUMBER 509 EFFECTIVE DATE: 10/01/87

HB 284 INTRODUCED BY DARKO, ET AL.
VISITATION INTERFERENCE AS A CRIME
BY REQUEST OF CHILD SUPPORT ADVISORY COUNCIL

1/19 INTRODUCED
1/19 REFERRED TO JUDICIARY
1/30 HEARING
2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/21 2ND READING PASSED AS AMENDED 91 0
2/24 3RD READING PASSED 96 0

TRANSMITTED TO SENATE
3/02 REFERRED TO JUDICIARY
3/16 HEARING
3/23 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/28 2ND READING CONCURRED 50 0
3/30 3RD READING CONCURRED 47 3

RETURNED TO HOUSE WITH AMENDMENTS
4/07 2ND READING AMENDMENTS CONCURRED 87 0
4/08 3RD READING AMENDMENTS CONCURRED 88 2
4/10 SIGNED BY SPEAKER
4/10 SIGNED BY PRESIDENT

4/10 TRANSMITTED TO GOVERNOR
4/15 SIGNED BY GOVERNOR
CHAPTER NUMBER 493 EFFECTIVE DATE: 10/01/87

HB 285 INTRODUCED BY CODY
ELIMINATE PROPERTY TAX ON LIVESTOCK

1/19 INTRODUCED
1/19 REFERRED TO TAXATION
1/19 FISCAL NOTE REQUESTED
1/26 FISCAL NOTE RECEIVED
2/06 HEARING
3/16 TABLED IN COMMITTEE

HB 286 INTRODUCED BY SPAETH, ET AL.
PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY OF IRRIGATION DISTRICTS

1/19 INTRODUCED
1/19 REFERRED TO JUDICIARY
1/19 FISCAL NOTE REQUESTED
1/26 FISCAL NOTE RECEIVED
2/06 HEARING
2/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/24 2ND READING PASSED AS AMENDED 89 10
2/24 3RD READING PASSED 96 3

TRANSMITTED TO SENATE
3/02 REFERRED TO JUDICIARY
3/24 HEARING
3/27 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/28 2ND READING CONCURRED 50 0
3/30 3RD READING CONCURRED 49 1

rm CS-32
v. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
240	1/27/87	1/27/87	2/19/87			2/19/87					
241	1/16/87	1/28/87	2/12/87			2/12/87					
256		2/12/87	2/14/87			2/14/87					
262	1/17/87	2/5/87	2/12/87	2/12/87							
267	1/17/87	1/29/87	1/29/87	1/29/87							
268	1/17/87	2/3/87	2/3/87 tabled								
283	1/19/87	1/30/87				2/5/87					
284	1/19/87	1/30/87	2/19/87			2/19/87					
286	1/19/87	2/6/87				2/23/87					
291	1/19/87	1/27/87	Referred to Highways Committee.								
301		2/5/87	failed to meet deadline 2/10/87								
305	1/20/87	2/5/87	2/6/87	2/6/87							
309	1/20/87	1/29/87	2/3/87			2/3/87					
316	1/20/87	1/28/87				2/19/87					

se a separate sheet for Senate Bills, House Bills, and Resolutions.

House BILL NO. 284

INTRODUCED BY Darko J. Brown

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE AS CRIMINAL OFFENSES; PROVIDING PENALTIES FOR AND DEFENSES TO VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference for the first or second time shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. On a third or subsequent conviction for visitation interference, the person convicted shall be fined an amount not to exceed $3,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

Section 2. Aggravated visitation interference. (1) A person who commits the offense of visitation interference by removing or taking from the state the minor child over whom he has legal custody commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed $3,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

Section 3. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation; or

(b) under an existing court order.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

INTRODUCED BILL
HB-284

Section 5. Codification instruction. Sections 1 through 3 are intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to sections 1 through 3.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 30, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on January 30, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Hannah and Brown who were absent.

HOUSE BILL NO. 283 AND 284: Rep. Darko, District No. 2, sponsor, stated that HB 283 deals with requiring a written agreement or court order for a custodial parent to move a child's residence outside the state and to make a custodial parent's attempts to prevent contact or visitation between the child and the noncustodial parent a basis for modification of the custody decree. She explained that HB 284 deals with visitation rights also and requested that both bills be discussed together. This bill is defining visitation interference and aggravated visitation interference as criminal offenses and provides penalties for and defenses to visitation interference and aggravated visitation interference. HB 283 simply requires a hearing for removal of children from the state after the divorce and states that parents must come before the court and the decree must be modified.

PROPONENTS: JOHN MCBRIGGS, representing the Montana Child Support Division Council, explained that the council was established in 1984 by the Governor. The state of Montana has its own self interest in resolving some of the problems relating to the child support issues. The intent of the council is to study all the inner relationships with custody, visitation and any other problems that may affect payment or nonpayment of child support and also to develop and recommend guidelines. Guidelines have already been approved by the Montana Supreme Court. Findings and recommendations from the Council have been compiled in these two bills. He urged support for both bills.

JIM LEITER, Townsend, stated that often custodial parents use contempt as a tool and this bill is fair to everyone involved. He urged support for both bills.

WAYNE G. PETERSON, Missoula, stated that his two sons deserve a much better life than the life they now live. Unfortunately, American society assumes that noncustodial parents, especially fathers, do not love their children. He

supports these bills for the sake of the children. He submitted written testimony. (Exhibit A).

R. HOLTER, Judge, Child Support Advisory Council, urged passage of both bills because they will take some of the problems away.

DOC DUTTON, Polson, pointed out that he basically wants these two bills passed for the sake of the children. He stated that the children should have rights too.

KAYE HOLMESLAND, Ft. Shaw, stated that she has experienced aggravated visitation twice in the last few years and is heartened to see this sort of legislation going forth. She felt there is a need to link visitation and child support, however, as a duty-right. Child support being the duty and visitation the right. She submitted written testimony. (Exhibit B).

BOB SILVERNALE, United Fathers of America, pointed out that these bills are a step in the right direction and urged for their passage.

DON FLEMING, currently an active member of a local divorce support group, supported this legislation.

RICK JENENSEN, went on record in support of the two bills.

GLENN KANVICK, Billings, a noncustodial parent and is on the Child Support Advisory Council, stated that part of the reason that the council got started was to work together on child support and visitation problems on a national level. The bills being discussed will not stop the problems, but they will help.

JERRY O'NEILL, Kalispell, urged support of the bills.

BILL LIMEN, acknowledged that children need both parents and these bills will help in this area and they will make a difference.

OPPONENTS: MARCIA DIAS, stated these bills need modification. She acknowledged that she has denied visitation rights because of domestic violence. She said she generally supports the two bills, but, there needs to be a provision covering why people can deny visitation. She further stated that if there is such a heavy penalty for denying visitation, there should also be a heavy penalty for not paying child support.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NOS. 283 AND 284: Rep. Rapp-Svrcek asked Judge Holter if there are agreements

with other states as to jurisdiction or boundaries in these cases. Judge Holter stated "yes".

Rep. Rapp-Svrcek asked Rep. Darko about page 3, line 14, if there was a grey area there. Rep. Darko stated that on a case by case basis, the judges handle this but this could be modified.

Rep. Eudaily questioned Judge Holter in regard to the penalty being so severe for a first offense and he answered that there are laws governing this and other states will not look at extradition for a misdemeanor.

Rep. Darko closed the hearing by stating that these bills give the opportunity for fairness to work. The hearing on HB 283 and 284 were closed.

HOUSE BILL NO. 472: Rep. Darko, sponsor, District 2, explained that this act establishes a system of court commissioners to act as mediators in proceedings for marriage dissolution and legal separation, providing for mediator qualifications, selection, and salary. This also provides for a procedure for mediation, allowing private mediation as the alternative to mandatory mediation required in a district court proceeding for dissolution or legal separation. She explained that limitations on mediation proceedings are: held in private, held without a verbatim record, and are confidential.

JOHN MCCREA, Child Support Council Division, proposes a system to resolve domestic issues through the process of mediation. Mediation results in 74% less court trials. Montana can only benefit from HB 472.

R. HOLTER, JUDGE, Child Support Advisory Council, stated that this is a very important field. The people here today testifying are talking about frustration with the present system. This bill is an attempt to solve problems and take away the need to fight. He pointed out that this is not a lawyers or judges relief act.

BOB SILVERNALE, United Fathers of America, stated that the system does not work but mediation does work. Divorce should be the last resort.

BILL RILEY, Licensed Social Worker and a Private Mediator, supported this legislation. He stated that the system of mediation is the how to of having the child raised by both of the parents when they are divorced. There are a few weaknesses in the bill and he addressed the fiscal issue in that instead of being a government run system, it can be given to the private sector and having only one mediator in

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Jan. 30, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

H

DATE 1-30-87

HB # 283 & 284

WITNESS STATEMENT

NAME Wayne D. Peterson BILL NO. 284

ADDRESS 2005 Lester St., Missoula, Mt. 59801 DATE 1-30-87

WHOM DO YOU REPRESENT? Myself and my sons, especially my sons.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Unfortunately, American society assumes that non-custodial parents, especially fathers do not love their children. As a father I grieve daily the loss of my sons. I miss them too much if that is possible.

Current propaganda emphasizes quality time. It states that it is more important to have one hour of quality time than ten hours of regular time. My counter statement to this is that quality time is not possible when you don't get time at all.

I am a sensitive, non-gregarious person whose family was my life line. The loss of my family was completely devastating.

The divorce demand made by ex-spouse was a complete surprise. She did not communicate any dis-satisfaction.

Since the divorce she has refused to discuss anything with me! She has refused to meet with me to mediate our incomplete financial and property settlement.

She continually models total rejection toward me to my sons.

The reason that I open with these statements is because any controversy with my ex-spouse DOES effect my relationships with my boys especially when my ex-spouse places my sons in the middle constantly.

First of all, as stated in the following previous statement she refuses to discuss visitation schedules and arrangements with me. This forces the boys to enter the "game" as her substitutes. This fact alone creates visitation interference problems for me.

It is no surprise, then, to tell you that she finds several tactics to interfere with my visitation rights.

I'm sure that anyone who reads this can easily recognize the fact that the custodial parent can be very ~~many~~ resourceful in finding ways to interfere.

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EXHIBIT

(over)

Children have the right to receive benefits of both their natural parents. Both parents have the right to receive the benefits of their children.

I do not wish ~~I don't~~ to interfere with my ex-spouse and I have not ~~did~~ interfered with her. I have voluntarily helped her and offered help.

~~The more I cooperate, the more threatened~~

The more I cooperate with my ex-spouse and sons, the more my ex-spouse becomes threatened, insecure, and guilt-filled. Therefore, she creates another problem for me AND THEM.

My primary interest has been centered around the welfare of my sons, Brian and Kevin. I can document many occasions when I have gone out of my way to help them.

Thank goodness, Linda has felt pressure from my work with the boys and she now is slowly starting to do a little bit for them. Good!

My ex-spouse continually places her problems on her sons and my sons.

Believe me, please. A custodial parent can continue a situation and a reason for refusing visitation rights. My ex-spouse has an active imagination.

Problems created for me by my ex-spouse which involve both sons.

She has refused to settle property, cash, and debts with me in full. She has refused to meet with a mediator.

She makes all letters from me to her available to the boys. She ignores letters which provoke me to send more letters.

She has refused to discuss visitation schedules and arrangements with me.

She daily involves the boys in her personal disputes with me. The boys are afraid of me.

She has encouraged them to argue with me in her behalf. She tells them not to see me if I object to her behavior.

She cleverly contrives telephone calls to me so that the boys hear a misrepresented telephone call.

She leaves the boys alone all night on frequent occasions.

She discourages telephone calls and letters to me from the boys. She neglected to inform me of changes in parent-teacher conferences.

She kept the boys away from the telephone for 48 hrs. on three different occasions.

She refuses to give me medical reports. I pay for one-half of the spouses medical

Visitations

She drops the boys off a block away from my apartment.

I must deliver them to the Southgate Mall; she is seldom present.

She fails to send money and information for the shopping that the boys are to do.

She never gives me a telephone number or a location where she may be reached in case of emergency; the boys have reached her by calling several numbers.

She failed to deliver Kevin to me on April 12, 1985.

She failed to deliver Kevin to me on time on Oct. 25, 1985

She directly interfered with a July, 1985 trip to Yellowstone; Brian was not able to go on a later trip. Kevin and I spent five days on the trip.

She continually scheduled doctor appointments on visitation days after I was told that such days were clear.

She failed to provide Brian with transportation money on an activity trip to Missoula. He asked me for bus fare.

She made an abusive telephone call from her work place to me; I was to expect to see the boys that day.

She has called the boys while they visited me to give them false road reports.

She has telephoned the boys to tell them that she would pick them up before the scheduled visitation had ended.

She interfered with my Christmas gift to the boys this year.

She never checks to see if the boys bring homework, retainers, money, musical instruments, etc. when they visit me.

She refused my visitation request on Christmas Day, 1985.

She had a family that includes Kevin in their activities send an unauthorized bill to me.

She now has told the boys that I can not come into her home to visit with them. I was able to do that the first year.

She continually places the boys in the middle of her dispute with me. There is always tension during visits with them.

She has created a situation in which the boys lie to me about their activities so I won't know what she does. I don't care what she does but I do care about what the boys do.

She yelled at me during a telephone, "You are buying the boys with your gifts!" The boys were in the same room at the time.

She yelled at me during a telephone conversation, "I want to punish you!" The boys were in the same room at the time.

She refused to give me all my personal financial records necessary to complete my income tax. She finally gave them to my accountant. My relationship with her and lack of it does affect my relationship with my sons.

When I break down in tears during a visit or during the telephone conversations. She tells the boys that I am upsetting them and that I should control myself more.

This past two and one half years, I have been able to visit the boys less than one day a month; one ten days total the first year.

The boys lie to me about their activities due to their mother's desire to avoid me + hide her activities.

Wayne G. Peterson
2005 Lesley, Missoula, MT
543-5603 59801

My two sons deserve a much better life than the life that they now live. I do all I can to cooperate with the boys and also with their mother. However, my positive action is very much watered down due to my ex-spouse's negative response.

EXHIBIT B
DATE 1-30-87
HB #284, 284

WITNESS STATEMENT

NAME Kaye Holmesland BILL NO. 284

ADDRESS Box 82, Ft. Shaw, MT 59443 DATE 1-30-87

WHOM DO YOU REPRESENT? _____

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I have experienced aggravated visitation twice in the last five years. I'm interested to see this sort of legislation going forth.

I feel there is a need to unite visitation and child support, however, as a duty-right. Child support being the duty - visitation the right. If the non custodial parent really could not pay due to circumstances beyond his/her control then special arrangements could be made.

In my case, as I'm sure in others, Montana continues to insist on visitation even during a time when a warrant for his arrest was in force. Meanwhile, my five daughters, receive

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he has $100,000 house and a thriving business. His way of avoiding support is to have everything he owns in someone else's name. Therefore, there is nothing legally in his name.

If he were required to be current in support before exercising visitation the children would be greatly benefited.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. HB 284 / 472 DATE Sept. 30, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dorothy Mangold	Ft. Shaw	yes	
KAYE HOLMES/AWS	Ft. SHAW	✓	
Wayne G. Peterson	2005 Lester St. Missoula, MT	yes	
Bill Harrington	Child Support Court 59801	✓	
John McRae	CHILD SUPPORT ADVISORY COUNCIL	✓	
K. Hotter	" " " "		
Sandy Cinney	Women's Lobbyist Fund		
~~DAVE FOWLER~~	~~Lee Enterprises~~		
Kate Hospital	Geraldine, MT		
Jay Leitan	Townsend, Mont	✓	
Charles P. Sherwood	Kalispell, MT		
Ed Gallagher	Kalispell		
Earl Kennedy	Kalispell		
Clarke Young	Kalispell		
Dan Kelly	Helena	✓	
Bob Ferris	Broadcasting		
D Rael	Bldg	?	
Jerry O'Neil	Kalispell		
Richard Jennings	Kalispell	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. _____ DATE Sept. 30, 1987

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Doc Sutton	Polson, Mont.	Yes, Yes	
Marcia Diggs	Helena, Mt		
Bill Mc	Helena	Yes	
Glenn Hanvick	Bigs	Yes	
Bob Silvernale	United Fathers of America	YES	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 5, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 5, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 262: Rep. Bradley, District 79, sponsor, stated that this bill sets up a hearsay exception for use in court in cases of sexual molesting of children. The child must be under the age of 10 and if it were to be admissible, the judge would make a written finding based on the evidence. This bill tries to protect the child. When this situation arises, the court is dealing with a very young child who is incompetent to be a witness, that is, the child would have forgotten the events, would be too young to understand a logical train of events throughout the time and would not understand the meaning of giving the truth or some such situation. The child is just not a proper witness. This lets a case go forward when otherwise it might not. Exceptions already in existence will not work in this particular situation. She submitted several articles for the record. (Exhibit A-H).

PROPONENTS: MIKE MCGRATH, Lewis and Clark County Attorney, explained that the problem is that the standard rules of evidence court procedures are not designed for children witnesses and are not designed for children that are victims of crime. Under the present law, unless there is specific exception, hearsay evidence is not admissible. The incidence of sexual abuse of young children has increased dramatically in recent years. Statistics show that there has been a 200% increase in the reporting of sexual abuse since 1976. By 1980, there were 25,000 reported cases annually. A substantial number of cases are never reported; estimates of the actual incidence vary from 100,000 to 500,000 per year. Often the child victim's out-of-court statements constitute the only proof of the crime of sexual abuse. Despite the importance of cross-examination, exceptions to the hearsay rule have long existed in evidentiary law. He urged adoption for this law and submitted an excerpt from the Kansas Supreme Court opinion. (Exhibit I).

SANDY ASHLY, works for the Mental Health Center in the sexual assault treatment program, pointed out that children are not little adults. Sexual abuse is an extremely

Rapp-Svrcek agreed with Rep. Mercer's proposed amendment and stated that it will make a good bill better. Rep. Addy opposed the proposed amendment. Rep. Mercer moved his amendment. Question was called and a voice vote was taken. The motion CARRIED 15-2, with Rep. Addy and Eudaily dissenting. (See Amendments attached).

Rep. Darko moved that HB 283 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 15-2, with Rep. Bulger and Miles dissenting. HB 283, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 284: Rep. Darko moved DO PASS. Rep. Mercer stated that he has a serious concern about this bill. He felt that it will take marital disputes out of the hands of the party and that prosecutors will get caught up in the middle of it, so, that there is a civil proceeding going on and a criminal proceeding at the same time. To make it a crime to interfere with visitation rights is serious. Rep. Darko stated that the only thing custodial parents can be charged with is contempt of court and she did not know how it can be fixed. Rep. Meyers made a substitive motion to table the bill. A voice vote was taken and the motion CARRIED 16-1, with Rep. Darko dissenting. HB 284, TABLED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:25 a.m.

Earl Lory

EARL LORY, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 11, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 11, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

HOUSE BILL NO. 393: Rep. Lory, District No. 59, sponsor, stated this bill comes at the request of the Department of Labor and Industry, specifically, the Human Rights Commission. He submitted written testimony. (Exhibit A). He introduced Anne MacIntyre of the Commission staff to discuss the specifics of the bill.

PROPONENTS: ANNE L. MACINTYRE, Human Rights Division, stated the staff of the Human Rights Commission has a statutory mandate to investigate and conciliate cases filed with it. Therefore, there is a strong emphasis on the mediation and conciliation aspects of the process. In fact, the Commission is able to dismiss or settle a majority of the cases filed without hearing or litigation. In October of 1986, in University of Montana Foundation vs. Human Rights Commission, the Montana Supreme Court determined that the Commission's interpretation of the statute was incorrect and held that the legislature granted the agency a total of 12 months within which to complete the administrative process when a party has requested removal. HB 393 does not reverse the Supreme Court ruling. If this bill is enacted, after a case has been pending for 12 months, either party still has the right to remove the case. The bill also provides that a party could waive the right to request removal. This bill would improve the process for removal to district court and make the Commission's procedures more meaningful. She submitted written testimony. (Exhibit B).

FREDERICK SHERWOOD, Attorney from Helena, served as staff counsel for the Commission from 1978-1982 and expressed his support for HB 393. He explained the bill addresses some weak spots in the present system of transition between the Commission and district courts when such a transition is triggered by the issuance of a "right to sue" letter. He further pointed out that he is less enthusiastic about proposed new subsection (2)(d) of subsection 49-2-509 and 49-3-312, which would allow the Commission staff to refuse

PROPONENTS: KELLY M. HOGAN, Attorney from Bozeman, stated it is a crime in the state of Montana to break into somebody's home and steal their goods, it is called burglary. It is a crime to help yourself to your partners joint funds but in the State of Montana, there is a loophole large enough for a child to disappear through. Many states have made it a crime to steal a child from the other parent. He pointed out that this is a necessary bill and if it is not passed, this situation of custodial interference will continue. If just one family can be saved from this terrible situation of a child being stolen and save the child from the fear, then, the legislature has accomplished much.

CYNTHIA PALMER, Bozeman, stated that presently, the law enforcement's hands are tied from helping a parent whose child has been stolen by the other parent. The Missing Children's Organization has requested that Ms. Palmer help on a local level in making changes in the law to protect children. She stressed this legislation be passed.

LINDA MCNEIL, Attorney, Bozeman, specifically addressed the proposed (c) in the amendment; joint custody. Currently, joint custody is a presumption in the State of Montana. She stated we must keep up with the changes in the law regarding custody. She urged support for HB 495 and the amendments.

OPPONENTS: MARCIA DIAS, stated she would like to see HB 495 killed. The reason for this is that the bill deals with two different subjects: 1) Taking the child out of the state; 2) Interference. Other bills have addressed this subject. She stated this bill appears to be unconstitutional because it creates absolute liability. It eliminates the requirement that intent must be proved. She further explained there are no circumstances constituting an exception or non-violation. The statute does not give courts any discretion. She submitted written testimony. (Exhibit B).

REBECCA C. ATKINS, East Helena, submitted written testimony (Exhibit C) and stated that HB 495 is an addendum to HB 284. She agreed there are many divorced parents who refuse visitation because of animosity towards each other, but this bill is too extreme and should not be passed.

CELESTE HOLLINGSWORTH, Helena, opposed the legislation because of the emotional trauma the children will face if the custodial parent is fined and imprisoned and because this legislation is wasting the taxpayer's money, especially when there are no penalties for late child support payments. She submitted written testimony. (Exhibit D).

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 495: Rep. Rapp-Svrcek asked Ms. McNeil to address Ms. Diaz's concerns in regard to an intoxicated or dangerous parent coming to pick up the children for visitation. She stated there seems to be confusion in regard to the civil processes for custody visitation with the criminal custodial interference. Ms. McNeil suggested that an order for supervised visitation should be obtained.

Rep. Corne', in closing, stated this bill addresses a serious void and he closed the hearing on HB 495.

HOUSE BILL NO. 672: Rep. Whalen, District No. 93, sponsor, stated this bill requires an insurer of a defendant to be joined as a defendant if a claim is or may be covered by the insurer and that at the time of trial the jury shall be informed of the amount of insurance coverage that the defendant has. Under the present system, when a plaintiff is injured in an accident and pursues the case, he is the one that sits at the counsel table, but his insurance company hires his attorney by contract and pays his attorney, controls his defense and the insurance company, on behalf of the insured, does the investigation. The net effect of the present status is that there is unmeaningful recoveries or no recoveries for injured plaintiffs. He stated there is an injustice in the system that this bill is designed to take care of.

PROPONENTS: ERIC THUESEN, Montana Trial Lawyers, supported the bill because the jury is very interested in knowing if there is insurance in a case. Many cases have to have retrials because the jury does not know the insurance status of the defendant and if the insurance company was named as a real party interest, the concern of the jury would be cleared up once and for all.

OPPONENTS: JACQUELINE N. TERRELL, American Insurance Association, urged a do not pass on this bill. The Montana Supreme Court has consistently ruled that introduction of evidence regarding the defendant's insurance is prejudicial. The jury's function is to determine the amount of damages in direct relation to the liability of the tort feasor.

KATHY IRIGOIN, State Auditor's office, went on record in opposition to this legislation.

ROGER MCGLENN, Independent Insurance Agents Association of Montana, stated this bill would send a negative signal to the insurance product supplier, the insurance companies. It would also reduce insurance loss predictability in the State of Montana. He pointed out that insurance companies do not pay claims with insurance company money, they pay claims

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 11, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)			
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EXHIBIT A
2-11-87
HB 495

AMENDMENT TO HOUSE BILL 495:

(1) Page 1, Line 10, following "(1)"
Strike: "(a)"

(2) Page 1, Line 11, following "if,"
Strike: "knowing"

(3) Page 1, Line 12
Strike: "that he has no legal right to do so,"
Insert" "(a)"

(4) Page 1, Lines 16, 17 and 18
Following: "(b)"
Strike: lines 16 and 17 in their entirety and line 18 through "committed"
Insert: "Prior to the entry of a court order determining custodial rights"

(5) Page 1, Line 20, following "parent"

Insert: "where the action manifests an intent to substantially deprive that parent of parental rights"

(6) Page 1, Line 22
Following: "court"
Strike: "decree, the offense of custodial interference is"
Insert: "order,"

(7) Page 1, Line 23
Following: line 22
Strike: "committed"

(8) Page 1, Lines 24 and 25
Following: "other"
Strike: the remainder of line 24 and line 25 in its entirety
Insert: "where the action manifests an intent substantially to deprive that parent of parental rights."

EXHIBIT B
DATE 2-11-87
HB # 495

Hoss Bill - 495

Is Hoss Bill 495 for real? It appears to me to be highly unconstitutional because it creates absolute liability! It eliminates the requirement that intent be proved.

You can't have people in jail without proving intent - especially for long periods.

Because there are no circumstances constituting an exception or non-did the State doesn't give court discretion any discretion!

And this offense is to be classified as a felony — ! While our prisons, of necessity, are releasing rapists, murderers, and other crimi-

EXHIBIT 6
DATE 2-11-87
HB 495

In Montana alcoholism is ~~a tremendous~~ a problem! Many custodial parents deny visitation due to alcoholic circumstances. Many of us do this to protect our children - only we to be sent to Prison for trying to protect our children.

Furthermore, many custodial parents use visitation interference as a leverage to get child support. This may not be ethical - But is it ethical to leave children without the basics of food + shelter. The Bureau of Child Support has helped this situation but the problem still looms large. Approximately 150,000 children + women are living below the poverty level in Montana. Child support has to be 30 days,

EXHIBIT # 12
DATE 2-11-87
HB # 495

No lawsuit [illegible]
child to wait 30 days for divorce
There are about 35,000 AFDC cases
at Child Enforcement Bureau, another
2000 non-AFDC cases - so as you
can see child support payments remain
a known problem in Montana

And how you propose a
$50,000 fine + ten years in
prison to a custodial parent
who may be denying visitation to
get those necessary funds to
feed her children.

I really ask you to consider
this issue fully - and, I hope
do, I believe you will vote
against this bill.

Sincerely,
(Mrs.) Nancy H. Dias
Helena, Montana
442-4496

EXHIBIT C
DATE 2-11-87
HB # 495

2-11-87

Mr Chairman and members of the committee:

My opposition is mainly to H.B. 284 which I understand is tabled at this time.

I can only give you personal reasons why this bill should not be passed.

As a divorced mother with 2 children, I am concerned as to the vagueness of this bill. Currently, my ex-husband is serving 40 years as a dangerous offender in the Montana State Prison for raping little children. (eligible for parole in 7y

The court would not terminate parental rights nor did the court terminate visitation.

In the best interest of the children, I have not allowed them to visit with their father at the prison. I am concerned that if this bill passes and he chooses to file charges, that I would end up in prison serving longer for denying visitation than he did for raping little children!

HB 283 I am also concerned about the moving out of state. I am remarried; should my husband find a job out of state - am I to remain behind because while my ex husband is in prison, still has visitation and refused to agree that we (the child move?

The question is - What is in the best interest of the children involved, who decide?

Is H.B. 495 an addendum to H.B. 284?

While I agree there are many divorced parent who refuse visitation because of animosity toward each other - and something should be done; I feel this bill is too extreme and should not be passed. Thank you.

Rebecca C. Atkins
2655 Valley Dr.
E. Helena, MT 59635

EXHIBIT D
DATE 2-11-87
HB #495

February 8, 1987

The Bill Concerning Child Visitation and The Fine and Imprisonment of the Custodial Parent.

As the custodial parent of an eleven year old boy, I feel I must say something about the problems concerning child visitation and the emotional stress that involves all of the parties. I will cite just a few problems that arise, although there are many more.

Have you considered the fact that at times the non-custodial parent comes to get the child in an inebriated condition; or any other condition that may be detrimental to the care and safety of the child?

Have you considered that the child may have other plans and that he or she may not want to go with the non-custodial parent on that particular day?

Have you considered that visitation must be agreed upon by both parents? This is another problem when the non-custodial parent shows up without the consent of the custodial parent.

Have you also considered [illegible]

the emotional trauma the children will face if the custodial parent is fined and imprisoned?

My question is, why are you wasting the taxpayer's money on ~~such~~ such nonsense? Why are there no penalties when the child support payments are continually late? Should there not be a heavy fine and imprisonment on this latter issue?

Please stop wasting our time and money and get to the real issues!

Celeste Hollingsworth
845 Terrence Road
Helena, 59601

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. HB 495 DATE 2/11/87

SPONSOR Carne

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Becky Atkins	2655 Valley Dr. E. Helena		X
Burkhartsmeyer, Chadine	2544 Heritage Dr		X
Dias, Marcia	10 Washington Pl.		X
~~Margaret A. English~~	~~100 Cramer Helena~~		
Kelly M. Hogan	222 EAST MAIN #303 BZN. MT. 59715	X	
Cynthia Palmer	1612 W Olive #12 Bozeman MT 59715	X	
Linda M. Nicl	403 W. Meadowlark, Bzn	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 19, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 316:

Rep. Gould moved that HB 316 DO PASS. He moved that a sunset be put on the bill and that a report be presented to the next Legislature. Question was called on the amendment to provide a sunset for the involuntary commitment statute. A voice vote was taken and the motion CARRIED unanimously. Rep. Gould moved that HB 316 DO PASS AS AMENDED. Mr. MacMaster stated that an extension of authority needs to be put on the bill. He pointed out that this is needed because 53-21-106 grants rulemaking authority and Section 102 is amended so the authority needs to be extended to Section 102 as amended. Rep. Gould moved the amendment. Question was called and a voice vote was taken. The motion CARRIED 13-2 with Reps. Hannah and Daily dissenting. Rep. Addy stated that the fiscal note is incorrect with regard to the definition of "mentally ill". He moved to amend page 5, lines 10-15, striking the words "no person". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved DO PASS AS AMENDED. Question was called and voice vote was taken. The motion CARRIED unanimously. HB 316 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 284:

Rep. Darko moved that HB 284 DO PASS. She stated that HB 283 without HB 284 is nothing more than mere language. She moved amendments that ask for the penalties to be softened down to the minimum amount because we have to keep aggravated visitation interference as a felony in order to extradite people from another state. Question was called and voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 284 DO PASS AS AMENDED. Rep. Addy moved to amend HB 284 on page 2, line 4 inserting "without the written consent of the custodial

parent". Rep. Mercer asked Rep. Addy if someone commits the offense of visitation interference but has the consent to take the child out of the state, someone would only be guilty of a misdemeanor. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Darko moved that HB 284 DO PASS AS AMENDED. Question was called and voice vote was taken. The motion CARRIED unanimously. HB 284 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 78:

Rep. Darko moved that HB 78 be taken off the table. She explained the amendments that state that the child enforcement bureau can attach only the part that is designated as a lump-sum settlement. Rep. Gould stated that he opposes the motion. He felt that this bill will not accomplish anything. Rep. Miles commented that she supports the motion because the bill addresses the one time when the worker is given a lump-sum of money that includes money for back child support and that money should go to the child. Question was called on the motion to move HB 78 off the table. The motion CARRIED 11-6. Rep. Darko moved amendments. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 78 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 10-5 with Reps. Cobb, Meyers, Addy, Mercer and Grady dissenting. HB 78 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 696:

Rep. Hannah moved that HB 696 DO PASS. Rep. Addy stated that we must do something with the Human Rights Commission. Rep. Hannah pointed out that we have a situation where the HRC will be forced to be more careful. Rep. Daily stated that he supports the bill and what Rep. Hannah has said. Rep. Miles explained that trial de novo's should be allowed for JP courts because JP courts are not a court of record. She stated that this is punitive legislation because there are a few people who do not like the decisions that come out of the HRC. Rep. Mercer pointed out that there is a record in JP court but the JP is an elected independent official and the HRC is not. Rep. Gould stated that this bill lends fairness and it is a good bill. Question was called and a voice vote was taken. The motion CARRIED 10-5. HB 696 DO PASS.

ACTION ON HOUSE BILL NO. 167:

Rep. Mercer moved that HB 167 DO PASS. He moved the amendments proposed by the subcommittee. Discussion followed on the amendments and he explained them. Question was called and a voice vote was taken. The motion CARRIED unanimously.

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 19, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 284

XX ☐ do pass ☐ do not pass ☐ be concurred in ☐ be not concurred in XX ☐ as amended ☐ statement of intent attached

Chairman

1. Page 1, line 19.
Strike: "for the first or second time"

2. Page 1, line 21.
Strike: "6 months"
Insert: "5 days"

3. Page 1, lines 21 through 25.
Strike: "On a" on line 21 through "or both." on line 25

4. Page 2, line 4.
Following: "custody"
Insert: "without the written consent of the custodial parent"

5. Page 2, line 8.
Strike: "$3,000"
Insert: "$1,000"

6. Page 2, line 9.
Strike: "2 years"
Insert: "18 months"

AHB284a/JM/JM2

FIRST WHITE reading copy (color)

REPORT LCB4

MONTANA LEGISLATIVE COUNCIL BILL STATUS SYSTEM
FINAL COMMITTEE REPORT OF REFERRED BILLS
COMMITTEE--(S) JUDICIARY

PAGE NBR..... 190
RUN TIME 08:32
RUN DATE.... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0277	2/23	3/17		CONCUR AS AMENDED		3/17
CONNELLY, MARY ELLEN			IMPOSING A DRIVER'S LICENSE REINSTATEMENT FEE TO FUND COUNTY DUI PROGRAMS			
HB0283	2/12	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION CHANGE CUSTODIAN MOVES; OBSTRUCT VISITATION BASIS CUSTODY CHANGE			
HB0284	3/02	3/16		CONCUR AS AMENDED		3/21
DARKO, PAULA			VISITATION INTERFERENCE AS A CRIME			
HB0286	3/02	3/24		CONCUR AS AMENDED		3/27
SPAETH, GARY			PERSONAL INJURY AND PROPERTY DAMAGE LIABILITY OF IRRIGATION DISTRICTS			
HB0301	2/16	3/06		CONCUR		3/6
RAPP-SVRCEK, PAUL			NEGLIGENT ENDANGERMENT AND NEGLIGENT VEHICULAR ASSAULT CRIMINAL LAWS			
HB0309	2/23	3/23		CONCUR AS AMENDED		3/26
QUILICI, JOE			GENERALLY REVISING THE CRIME VICTIMS COMPENSATION ACT			
HB0326	2/10	3/05		CONCUR AS AMENDED		3/5
ADDY, KELLY			CREDIT FOR TIME SERVED ON SENTENCE WHEN PROBATION IS REVOKED			
HB0335	2/17	3/03		CONCUR AS AMENDED	Referred back 3/3	3/3 3/4
PISTORIA, PAUL			ALLOW PRIVATE PARKING SERVICE TO ENTER AGREEMENT WITH LOCAL GOVERNMENT			
HB0344	3/02	3/18		CONCUR AS AMENDED		3/19
ASAY, TOM			REVISE TIME LIMITS FOR MEDICAL MALPRACTICE ACTIONS			
HB0353	2/10	3/23		CONCUR		3/23
GOULD, BUDD			INCLUDING DENTISTS IN DOCTOR-PATIENT PRIVILEGE			
HB0367	2/16	3/23		CONCUR		3/23
MILLER, RON			FURNISHING HUMAN TISSUE A SERVICE AND NOT A SALE			

HOUSE BILL NO. 284

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE AS CRIMINAL OFFENSES; PROVIDING PENALTIES FOR AND DEFENSES TO VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference ~~for the first or second time~~ shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed ~~6 months~~ 5 DAYS, or both. ~~On a third or subsequent conviction for visitation interference, the person convicted shall be fined an amount not to exceed $3,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.~~

Section 2. Aggravated visitation interference. (1) A person who commits the offense of visitation interference, by removing or taking from the state the minor child over whom he has legal custody WITHOUT ~~THE~~ WRITTEN CONSENT OF THE ~~CUSTODIAL PARENT~~ PERSON ENTITLED TO VISITATION PURSUANT TO AN EXISTING COURT ORDER, commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed ~~$3,000~~ $1,000 or be imprisoned in the state prison for a term not to exceed ~~2 years~~ 18 MONTHS, or both.

Section 3. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation; or

(b) under an existing court order.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

in all valid applications that are severable from the invalid applications.

Section 5. Codification instruction. Sections 1 through 3 are intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to sections 1 through 3.

-End-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 16, 1987

The forty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 16, 1987, by the Chairman, Joe Mazurek, in Room 402 of the state Capitol.

ROLL CALL: All members were present with the exception of Senator Pinsoneault who was excused.

CONSIDERATION OF HOUSE BILLS 283 and 284: Representative Paula Darko, House District 2, introduced House Bills 283 and 284, which are attached as Exhibit 1 and Exhibit 2.

PROPONENTS: John McGray, Montana Child Support Council, explained how the council runs in the state. He said the only remedy for visitation problems in Montana is the parties have to appear in court and prove something happened. He said many fathers who have visitation problems don't know about this one remedy and become frustrated and decide not to pay child support to get even. He felt HB 283 and HB 284 will help protect the father's rights. He said HB 283 protects the child's right to know both parents. He gave a California law example that showed how tough states are getting with family law. He said the moving of a child upsets a child's schedule with the visiting parent. He said a move to another state might cause the loss of visitation rights because of different state laws. He stated HB 283 will help the visiting parent keep his rights by having a hearing. He explained HB 284 states interferring with the child can be a crime. He proposed amendments for HB 284 because several people were concerned about the visiting parent coming for a visit and being drunk. (Exhibit 3)

John Hollow, attorney in Helena in custody law, gave the committee a Parent/Child Sharing Guideline. (Exhibit 4) He said HB 283 fails to address a situation of a young child that is bonded to one parent. He said children become enraged because the bonding has been broken. He

said the moving of a child will cause the bonding to break. He suggested on page 2, line 15, that the court balance the child's and parent's interest in a moving situation. He wanted the court to have the right to say no to a move if it would hurt the child. Mr. Hallow supported the John McGray amendment.

Lynn Robson, Women's Lobbyists Fund, wanted to see the non-custodial parent have to go through the hearing procedure if the non-custodial parent was the one moving. She also wanted to see a quicker access to the court. She said low income people don't have the income to get an attorney and get into court quickly. She said the problem is many who do get out of state jobs have to be on the job as quick as possible, but if the court procedure takes time, it causes problems with separation from children.

Joan Uda, Child Support Advisory Council, supported the McGray amendment, but not the Hollow suggestion.

Marcia Dias, representing herself, supported HB 283 and HB 284. (Exhibit 5)

Sue Fiefield, AFC, said many mothers are upset about visitation rights. She said many mothers feel fathers shouldn't have visitation rights because of the father's activities.

OPPONENTS: Klaus Sitte, Legal Services Association, Missoula, said these bills will not correct the problem of late child support payments. He said in HB 283, it fails to have the judge have a list of reasons for not letting the non-custodial parent visit, such as visiting while intoxicated. He said he agreed with the McGray amendment because it does put some guideline in for allowing visitation or not. He explained that after a divorce the trend is that the father's situation improves and the mother's doesn't. He asked who will have the mother come before the court when she wants to move if she is the worse off of the two parents. He said HB 284 shouldn't have visitation problems under the criminal code because county attorneys like to keep family separations out of the criminal court. He felt it will over-burden the court systems by putting this in the criminal code.

Nina Vagnelis, attorney, opposed HB 283 and HB 284. She said the visitation decree modification in court is a major problem. She told several stories about women moving with

children and being stopped because of a court hearing subjected by the non-custodial parent. She thought there should be a time period in HB 283, in the notice, such as 30 days before a move, to the non-custodial parent. She said this gives the non-custodial parent time to go to court and it gives time to the custodial parent also to prepare for court. She said the court should have the right to modify the visitation decree if a parent had moved or gave notice of moving. She disagreed with Mr. Hallow's idea that a custodial parent should have to choose between the child or the job. She said the custodial parent should not have to hire a lawyer just to move.

DISCUSSION ON HOUSE BILLS 283 and 284: Senator Blaylock said the power of visitation is used against the fathers many times. Nina Vagnelis said a statute now on the books says visitation and child support can't be linked, but they are linked in a lot of parent's minds. She said many mothers wouldn't leave the state if it wasn't for economic need.

Senator Mazurek asked where the bills originated. Mr. McGray said other states have these statutes. Senator Mazurek asked why, in HB 284 on page 1, lines 22-25, the House deleted increasing the penalties for subsequent convictions. Rep. Darko replied that the House Judiciary felt the harsher penalties for subsequent convictions would antagonize more hard feelings and make the situation worse in a troubled family situation.

Senator Blaylock asked John McGray what he thought of John Hollow's suggestion on the McGray amendment, which just put it all under "just cause". Mr. McGray thought it too broad for family law.

Senator Beck asked how many people move out of the state just to upset the non-custodial parent. He felt that didn't happen very often. Rep. Darko said many people leave for economic reasons, but they have to let the other parent know they are leaving.

Rep. Darko closed by saying HB 283 and HB 284 make it fair for both sides, not just one. She explained she invited Klaus Sitte to come and testify against the bills because it made the hearing fair. She said she wouldn't oppose an amendment for court access to low income people or the 30 day notice mentioned.

CONSIDERATION OF HOUSE BILL 495: Representative Dick Corne', House District 77, introduced HB 495. (Exhibit 6) He also distributed copies of amendments to House Bill 495. (Exhibit 6 A)

PROPONENTS: There were no proponents.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL 495: Senator Blaylock asked if the state really needed this bill because of House Bills 283 and 284. Rep. Corne' said section (a) of the bill is not covered in the other two bills.

Senator Halligan inquired why it has to be expanded to the District Court instead of the Justice of the Peace Court. The committee said they would talk about this in executive action.

Representative Corne' closed the hearing on HB 495.

CONSIDERATION OF HOUSE BILL 566: Representative Nancy Keenan, House District 66, introduced the bill. (Exhibit 7)

PROPONENTS: Caryl Wickes Borchers, Montana Coalition Against Domestic Violence, supported the bill. (Exhibit 8)

Written testimony in support of HB 566, is attached. (Exhibit 8A, 8B, 8C, and 8D)

Janet O'Rantia read testimony for her daughter, which is signed "A Concerned Mother". (Exhibit 9)

Jennifer Payne, Great Falls Mercy Home, read testimony for Anna Marie Kelly. (Exhibit 10)

Barbara Archer, representing herself, supports HB 566. (Exhibit 11)

Ann G. Eifert, Dillon, Montana, represented by Ms. Archer, supported HB 566. (Exhibit 12)

Lenore F. Taliaferro, Family Abuse Specialist, Friendship Center of Helena, rose in support of HB 566. (Exhibit 13)

Pamela Shore, Woman's Law Caucus, supported the bill. She explained there are five ways to abuse: 1) verbal; 2) physical; 3) sexual abuse; 4) economic; and 5) socialization.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 16

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault		X	
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 1
DATE March 16, 1987
BILL NO. HB 283

SUMMARY OF HB283 (DARKO)
(Prepared by Senate Judiciary Committee staff)

HB283 is by request of the Child Support Advisory Council and amends the law relating to child custody. This bill would prohibit a parent who has been granted custody of his or her child after divorce or separation from moving with the child to another state as long as the noncustodial parent lives in Montana, unless the noncustodial parent gives written consent or the change is allowed by an order of the court. The purpose of a court hearing is to allow a noncustodial parent an opportunity to get a modification of his visitation schedule. The court may order a new visitation schedule and apportion transportation costs between the parents. The bill also makes a custodial parent's attempts to prevent contact or visitation between the child and a noncustodial parent grounds for modification of custody. In addition to the possibility of modification provided in this bill, a companion bill, HB284, also provides criminal penalties for taking a child out of state under these cirsumstances.

COMMENTS: As pointed out by letter from an attorney in Missoula, the provisions of the bill could place a custodial parent in a real dilemma if he has to choose between breaking the law or protecting a child from an abusive noncustodial parent. This could be especially burdensome on low-income parents who cannot afford legal advice.

C:\LANE\WP\SUMHB283.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 16, 198
BILL NO. HB 284

SUMMARY OF HB284 (DARKO)
(Prepared by Senate Judiciary Committee staff)

HB284 is by request of the Child Support Advisory Council and amends the law relating to child custody and visitation. This bill creates the crimes of "visitation interference" and "aggravated visitation interference" and provides penalties for and defenses to the crimes.

Section 1. NEW. Creates the crime of "visitation interference" = knowingly or purposely preventing, obstructing, or frustrating the visitiation rights of a person entitled to visitation under an existing court order. Penalty: a fine up to $500 or imprisonment in county jail not to exceed 5 days, or both.

(Note: as introduced, the penalty would have been a fine of up to $500 or up to 6 months in the county jail, or both, for a first or second offense and a fine up to $3,000 or imprisonment in state prison for up to 2 years, or both, for a third or subsequent offense. The House amended to $500/5 days for any offense.)

Section 2. NEW. Creates the crime of "aggravated visitation interference" = visitation interference (see above) committed by removing or taking the minor child from the state without the written consent of the person entitled to visitation. Penalty: a fine up $1,000 or imprisonment in the state prison for up to 18 months, or both.

(Note: as introduced, the penalty would have been a fine of up to $3,000 or imprisonment for up to years, or both. The House amended to $1,000/18 months.)

Section 3. NEW. Defenses = consent of the person entitled to visitation or a court order. For a first-time offense only, return of the child prior to arrest is a defense.

Section 4. NEW. Severability. (standard)

Section 5. NEW. Codification instruction. To be codified in Title 45, Crimes.

COMMENTS: Same as for HB283. The bill doesn't make any allowance for a custodial parent faced with breaking the law or protecting a child from an abusive noncustodial parent who has visitiation rights.

C:\LANE\WP\SUMHB284.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE March 16, 1987
BILL NO. HB 284

HB 284 be amended as follows:

1. Page 2, line 17.

Following: "vacation;"
Strike: "or"

2. Page 2, line 18.

Following: "order"
Insert: "; or"

3. Page 2, line 18.

Following: "order"
Insert: "(c) Under circumstances which tend to demonstrate probable cause to believe that physical harm to the child or the custodial parent will occur if the visitation right is exercised."

Appendix A: *Parent-Child Time-Sharing Guidelines*

*Guideline 1—Recommended Frequency of Contact between Either Parent and the Child/ren**

Age of the Child	Frequency of Contact
Under one year	2 days
One through two years	4 days
Three through five years	1 week
Six through nine years	2 weeks
Ten through thirteen years	4 weeks
Fourteen years plus	6 weeks

Guideline 2—Minimal Frequency of Contact between Either Parent and Child/ren

Age of the Child	Minimal Frequency of Contact
Under one year	1 week
One through two years	10 days
Three through five years	3 weeks
Six through nine years	4 weeks
Ten through thirteen years	6 weeks
Fourteen years plus	9 weeks

*This guideline assumes shared parental responsibility whereby each parent has equal access to and limited separation from the child/ren.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE March 16, 1987
BILL NO. HB 283, ~~SB~~

SENATE JUDICIARY
EXHIBIT NO. 5
DATE March 16, 1987
BILL NO. HB 283

H.B 283

I, Support this bill and its intent. With the following amendments

However

(1) The Custodian parent should be allowed To leave the state by notifying the Court and Non-Custodial parent in writing (2-3) weeks in advance To departure, if a hearing cannot be arranged before the date of departure The custodian parent should sign a statement promising to return for the hearing. [This is necessary so that people do not lose employment opportunities, because they are caught up in Court for 6 months - 1 year. The Courts move slowly.]

(2) Non-Custodial parent should be required To report To the Court and Custodial parent in writing (2-3) weeks in advance To departure, if a hearing cannot be arranged before the date of departure. The Non-Custodial parent should sign a statement promising to return for the hearing. [This is necessary To make

arrangements for continuing child support and visitation. The non-custodial parent is subject to all fines and penalties as the custodial parent by not adhering to this procedure prior to leaving the State.

Marcia Dias
10 Washington Pl.
Helena, Mont 59601
443-4496.

BEST COPY AVAILABLE

SENATE JUDICIARY
EXHIBIT NO. 5
DATE March 16, 1987
BILL NO. HB 284

BEST COPY AVAILABLE

284.

I support the intent of HB284- The prevention of visitation interfer for vindictive purposes.

1) However, it requires amendments To protect innocent children from certain situations - and it is necessary to protect parents who interfer with visitation for reason of protecting a child.

It needs To include defense for just cause To include child abuse, alcoholism and other addictive physical + emotional harm,

If it is not amended custodial parents will be afraid To interfer with visitation, when there is a detrimental situation occuring.

2) Amend To likewise impose a $1000 fine and jail Term for not paying child support on Time. Is it not just as much a crime To leave Children without food as To deny visitation. Those 2

BEST COPY AVAILABLE

Interested

Thanks.

Nancia Dias
10 Washington Pl
Hebron, NH
443-4495

DATE March 16th

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Debra Jones	Women's Lobbyist Fund	566 679	X	
Jill Kennedy	Friendship Center of Helena	566 679 284	X	
Elena Nelly	MWOL		w/ Amend	
Ignore F. Jalufka	Friendship Center of Helena	566 679	X	
Hope Taylor	PSRS	566 679	X	
Joan Uda	Child Support Advisory Council	283 284		
Lynn Peterson	Women's Lobbyist Fund	283 284		
Tom Schneider	Individual	566	X	
Carey Wicks Borchers	MT. Coalition Against Domestic Violence	566	X	
Carey Wicks Borchers	MT. Coalition A.D.V.	679	X	
Janet Arzente		566	X	
Deanna Dooley		679	X	
Dolores V. Harrison	Great Falls Mercy Home	566 679	X	
Jill Kennedy	Friendship Center of Helena	283 284		X
Ignore F. Jalufka	" " "	283 284		X
Pamela Shoney	Women's Law Caucus	566	X	
Jennifer Cayne	Ft. Falls Mercy Home	566 679	X	
Mira Vazquez	Attorney	495, 283 283		X

(Please leave prepared statement with Secretary.)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 19, 1987

The forty-sixth meeting of the Senate Judiciary Committee was called to order on March 19, 1987 at 10:00 a.m. in Room 325 of the state Capitol by the chairman, Senator Joe Mazurek.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 790: Representative Dennis Rehberg, Billings District 88, introduced HB 790, which amends the law relating to payment of attorney fees and costs in lawsuits. (Exhibit 1) He presented the committee with statistics on states' ballot/policy issues. (Exhibit 2)

PROPONENTS: Riley Johnson, NFIB, supported the bill.

Kay Foster, Billings Chamber of Commerce, supported the bill.

Stuart Doggett, Chamber of Commerce, testified in favor of the bill.

John Maynard, Tort Claims Dept., explained all sections of the bill. (see exhibit 1)

OPPONENTS: Tim Baker, PSC, stated he was just a technical witness for the bill. He said there will be a fiscal impact with this bill.

Frank Crowley, Montana Department of Health, stated his department has only 4 attorneys, so this department does a lot of action. He said his department is 90% federally funded. He expressed he would like to see the sunset provision be set back to the way it was.

George Ochenski, Montana Environmental Information Center opposed the bill. He said Karl Englund told him this was a good bill for lawyers. He explained that when the Department of Health needs a lawyer, the state pays for it,

Senator Brown distributed a letter from James Bartlett, an attorney in Kalispell, which stated the bill will allow mothers who are not on welfare to intercept these lump sum payments. (Exhibit 4)

Senator Mazurek did not agree with the idea that all mothers could be under this bill.

Senator Halligan added to his motion, all departments can use this bill, and not just the Dept. of Revenue. The motion carried.

Senator Halligan moved House Bill 78 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 495: Written testimony was given to the committee by Linda McNiel and Mike Salvagni. (Exhibit 5) The committee waited on action on HB 495.

ACTION ON HOUSE BILL 679: Valencia Lane explained that HB 740, if passed, would make this bill's percentage of 50% of the funding going to abuse programs, change to 1%. She distributed amendments to the bill. (Exhibit 6) Senator Beck moved the amendments. The motion carried. Senator Beck moved HB 679 BE CONCURRED IN AS AMENDED. The motion carried.

ACTION ON HOUSE BILL 283: John McGray distributed amendments to HB 283. (Exhibit 7) Senator Mazurek wanted to clarify that the bill still makes a parent notify the other if he/she is moving a child's residency to another state, and the parent that receives the notice must give written consent. Senator Mazurek said the bill does say it is for joint custody cases and non-joint custody cases.

Senator Bishop wanted to know where the 30 day notice provision was. Senator Mazurek asked what happens to a parent who doesn't give a 30 day notice.

Senator Beck wanted to wait for action on HB 283 and 284. The committee will wait on action.

ACTION ON HOUSE BILL 344: Chat Smith gave written testimony to the committee. (Exhibit 8)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1987

The forty-eighth meeting of the Senate Judiciary Committee was called to order at 9:00 a.m. on March 21, 1987, by the chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All members were present with the exception of Senators Blaylock and Crippen, who were excused.

EXECUTIVE SESSION

ACTION ON HOUSE BILL 696: Senator Halligan moved to TABLE House Bill 696. Senators Galt, Brown, Beck and Bishop voted no. The motion FAILED because of a tie. The committee decided to wait on action until Senators Blaylock and Crippen returned.

ACTION ON HOUSE BILL 509: Valencia Lane explained the amendments she had prepared. (Exhibit 1) Senator Pinsoneault checked into the aircraft safety laws and found one is legally drunk in a plane at .04. Senator Mazurek thought the 5th amendment should strike "to have been" in the 10th line, and insert "was". The committee agreed. Senator Pinsoneault moved the changed amendments. The motion carried. Senator Pinsoneault moved House Bill 509 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 504: Valencia Lane explained the prepared amendments. (Exhibit 2) Senator Mazurek asked how one determines in HB 504 amendment #3, (i), what is "serious and material" in violating qualification for the ballot. Senator Brown suggested illegal signatures. He felt one would have to have quite a few to make a difference. Senator Mazurek suggested taking "serious and material" out of the amendments. The committee agreed. Senator Brown moved the amendments, and the motion carried. Senator Brown moved House Bill 504 BE CONCURRED IN AS AMENDED. The motion carried with Senators Halligan and Pinsoneault voting no.

ACTION ON HOUSE BILL 470: Valencia Lane presented prepared amendments. (Exhibit 3) Senator Mazurek felt the amendments left wide open, juvenile records, which he did not like.

first proposed amendment. Senator Yellowtail moved the amended amendments. The motion CARRIED.

Senator Brown moved House Bill 73 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 283: Valencia Lane distributed the amendments and explained them. (Exhibit 5) Senator Mazurek suggested changing the last amendment on Exhibit 5 so that the language was more clear. The amendments passed with the changes. Senator Halligan moved House Bill 283 BE CONCURRED IN AS AMENDED. The motion CARRIED.

ACTION ON HOUSE BILL 284: Valencia Lane distributed copies of amendment. (Exhibit 6) Senator Beck said the amendment or bill doesn't make it clear if a person has to give notice for a vacation. He said a vacation might be more than two weeks. Senator Mazurek felt this bill should not include the penalty as an aggravated felony.

Mr. Bill Harrington, Child Support Advisory Council, and an attorney, stated the major problem with not receiving child support is visitation rights because the rights have been violated, so the child support stops. Ms. Lane found section 2 in the bill where it clarifies vacation time. She said there is great concern about the father showing up drunk for visits. Senator Halligan felt the bill should include the words "good cause" when it comes to rejecting a visitation.

Senator Pinsoneault thought "good cause" was too broad a term and could open a lot of avenues. Senator Halligan said the county attorney needs broad terms in these cases because it gives him discretion. Valencia Lane suggested using the word "reasonable" over "good". Senator Halligan moved the "reasonable cause" clause on page 2, line 18. Senator Pinsoneault wanted to adopt the amendments given March 16. (Exhibit 7) Senator Halligan echoed a broad area is better to work with in family law. Senator Yellowtail said there should be clearer language on page 2, line 3, with the vacation problem. Senator Halligan moved with his other motion, Valencia Lane's amendment and a change on page 2, line 3, to clear the vacation situation. The motion CARRIED. Senator Halligan moved House Bill 284 BE CONCURRED IN AS AMENDED. The motion CARRIED, with Senator Mazurek voting no.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 21

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman		X	X
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock		X	X
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE March 24 1987
BILL NO. HB 284

Proposed Amendments to HB 284

Third Reading Copy (Blue)

1. Page 2, line 4.
Following: "custody"
Insert: "without having given written notice as required by 40-4-217 or"

E:hb284.txt/hm

SENATE JUDICIARY
EXHIBIT NO. 7
DATE March 21, 1987
BILL NO. HB 284

HB 284 be amended as follows:

1. Page 2, line 17.

Following: "vacation;"
Strike: "or"

2. Page 2, line 18.

Following: "order"
Insert: "; or"

3. Page 2, line 18.

Following: "order"
Insert: "(c) Under circumstances which tend to demonstrate probable cause to believe that physical harm to the child or the custodial parent will occur if the visitation right is exercised."

STANDING COMMITTEE REPORT

SENATE

March 23 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 284

Third reading copy (blue color)

Visitation interference as a crime.
Darko (Halligan)

Respectfully report as follows: That HOUSE BILL No. 284

1. Page 2, line 3.
Strike: "removing" through "state"
Insert: "changing the residence of"

2. Page 2, line 4.
Following: "custody"
Insert: "to another state without giving written notice as required in 40-4-217 or"

3. Page 2, line 17.
Strike: "or"

4. Page 2, line 18.
Following: "order"
Insert: "; or
(c) with reasonable cause"

7080k/C:JEANNE\WP:jj
Amendments, HB 284

~~XXXXXX~~ AND AS AMENDED
BE CONCURRED IN

~~XXXXXXXXXXX~~

Senator Mazurek Chairman.

3-23
1st

HOUSE BILL NO. 284

INTRODUCED BY DARKO, J. BROWN

BY REQUEST OF THE CHILD SUPPORT ADVISORY COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE AS CRIMINAL OFFENSES; PROVIDING PENALTIES FOR AND DEFENSES TO VISITATION INTERFERENCE AND AGGRAVATED VISITATION INTERFERENCE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference ~~for the first or second time~~ shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed ~~6 months~~ 5 DAYS, or both. ~~On a third or subsequent conviction for visitation interference, the person convicted shall be fined an amount not to exceed $3,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.~~

Section 2. Aggravated visitation interference. (1) A person who commits the offense of visitation interference, by ~~removing or taking from the state~~ CHANGING THE RESIDENCE OF the minor child over whom he has legal custody TO ANOTHER STATE WITHOUT GIVING WRITTEN NOTICE AS REQUIRED IN 40-4-217 OR WITHOUT ~~THE~~ WRITTEN CONSENT OF THE ~~CUSTODIAL PARENT~~ PERSON ENTITLED TO VISITATION PURSUANT TO AN EXISTING COURT ORDER, commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed ~~$3,000~~ $1,000 or be imprisoned in the state prison for a term not to exceed ~~2 years~~ 18 MONTHS, or both.

Section 3. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation; ~~or~~

(b) under an existing court order; OR

(C) WITH REASONABLE CAUSE.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

Section 4. Severability. If a part of this act is

REFERENCE BILL

invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Codification instruction. Sections 1 through 3 are intended to be codified as an integral part of Title 45, and the provisions of Title 45 apply to sections 1 through 3.

-End-